Supreme Court, U.S.
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80-971

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

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October Term, 1980

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PATRICIA SUSAN LANDIS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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# PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

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October Term, 1980

No. _____

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UNITED STATES OF AMERICA,

Plaintiff, Respondent,

vs.

PATRICIA SUSAN LANDIS,

Defendant, Petitioner.

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# PETITION FOR WRIT OF CERTIORARI

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Defendant-Petitioner Patricia Susan Landis, by and through her attorney, Marc G. Kurzman, 601 West Butler Square, Minneapolis, Minnesota, 55403, respectfully petitions for Writ of Certiorari pursuant to Rule 20 of the Rules of the United States Supreme Court.

A.

The questions presented for review are:

1. Whether the Affidavit in Support of the Warrant is insufficient on its face to establish probable cause.

2. Whether information on the Affidavit, supplied in part by an informant, fulfills the second requirement of the Aguilar-Spinelli test for reliability.

B.

The caption of this case lists all the parties to the proceeding.

C.

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D.

An opinion was rendered by the United States Court of Appeals for the Eighth Circuit in this matter on October 16, 1980. United States of America v. Patricia Susan Landis, No. 80-1318.

The District Court Order in this matter was filed March 19, 1980. United States of America v. Patricia Susan Landis, Cr. 4-80-8 (D.C. Minn. March 19, 1980).

E.

Jurisdiction of this Court is invoked pursuant to Rule 20 of the Rules of the United States Supreme Court which provides that a Petition for a Writ of Certiorari to review the judgment in a criminal case of a Federal Court of Appeals shall be filed within SIXTY (60) DAYS after the entry of such document.

The Eighth Circuit Court of Appeals Opinion in United States v. Patricia Susan Landis was filed on October 16, 1980.

F.

The constitutional provisions, treaties, statutes, ordinances, and regulations which are involved in this case are as follows:

1. The Fourth Amendment to the Constitution of the United States which provides that, "No warrants shall issue but upon probable cause."

G.

Defendant-Petitioner was detained at Minneapolis-St. Paul International Airport on January 5, 1980, while a search warrant was obtained for her luggage. The search warrant was

obtained pursuant to an Affidavit attached hereto as Appendix A. Defendant-Petitioner maintains that such Affidavit in support of the warrant is insufficient on its face to establish probable cause to issue that warrant. Specifically, the total information offered to support probable cause can be summarized as follows:

1. Government agents believed a woman, described only as "butchy looking and fat and dumpy," would depart from Minneapolis to an unspecified destination in California sometime on January 4th, before 11:30 p.m., would travel by commercial airlines, and the purpose of her trip was to acquire LSD.

2. At 10:30 p.m. on January 4th, government agents observed a white female, 5'6" tall, 140 pounds, dressed in a pantsuit with a rose boutonniere at

the Minneapolis-St. Paul Airport.

3. The ticket agent stated this particular woman purchased a one-way ticket to San Francisco, paying in cash, and was aware the flight would depart later than scheduled. Additionally, the agent stated that the woman, identified by him as A. Garcia, was the only woman in the terminal that evening who he observed and who fit the description supplied by the government agent.

4. The woman returned to Minneapolis the following evening, made two phone calls, and waited on the lower level near an exit looking watchful. There she was met by another woman. They left the airline terminal together and approached a parked car.

5. The suspect woman purchased her ticket to San Francisco under an assumed name.

This information, Defendant-Petitioner contends, does not rise to the level of probable cause.

Secondly, Defendant-Petitioner contends that the information on the Affidavit, which was supplied in part by an informant, does not fulfill the second requirement of the Aguilar-Spinelli test for reliability. This test requires information in an affidavit supporting a warrant to be sufficient to induce a reasonably prudent person to believe:

1. That the informant is reliable, and

2. That the informant has come upon the information in a reliable manner.

Defendant-Petitioner contends that the second prong of this test remains totally unfulfilled in this case. There is no indication that the information in

the Affidavit was obtained in such a way as to be reliable. That is, there is no indication that the Affiant or the Affiant's source actually perceived with his senses the facts related. Further, the Affidavit is so incomplete in this respect that it is unreasonable even to infer that either the affiant or the informant had first-hand knowledge of the facts contained therein.

In the case at bar, the information in the Affidavit was related to the Affiant and therefore was not within the first-hand knowledge of the Affiant. In addition, no source of the Affiant's information was noted. Nowhere in the Affidavit is there a statement recounting any personal meeting between the Affiant and the informant. There is also no indication as to how the Affiant came to know the information

transmitted. Therefore, Defendant-Petitioner contends that the second prong of the Aguilar-Spinelli test remains unfulfilled.

H.

As a result of the search pursuant to the above-mentioned warrant, a quantity of Lysergic Acid Diethylamide (LSD), a Schedule I narcotic controlled substance, was found in the possession of Patricia Susan Landis. On January 11, 1980, the United States Grand Jury returned a true bill charging Patricia Susan Landis with violations of Title 21, United States Code, Section 841(a)(1) and 846.

I.

Defendant-Petitioner maintains that the decision by the Eighth Circuit Court of Appeals in this case conflicts with applicable decisions of this Court. Specifically, in Aguilar v. Texas, 378 U.S. 108 (1964), and Spinelli v. United States, 393 U.S. 410 (1969), this Court developed a two pronged test for crediting informant's statements when those statements form the basis for probable cause for a search warrant. This test requires that an affidavit in support of a search warrant which recites facts related to the affiant by an informant, must also state facts upon which a magistrate may conclude that that informant is credible and that his information was gained in a reliable manner.

This Court has also decided cases which have carved out exceptions to one or the other requirement of the Aguilar-Spinelli test. In United States v. Harris, 403 U.S. 573 (1971), this Court creates an exception to the first prong of the Aguilar-Spinelli test holding that statements made against the penal interests of the informant are inherently credible.

In much the same manner, this Court in Draper v. United States, 358 U.S. 307 (1959), recognized a narrow substitute for the second prong of the Aguilar-Spinelli test. Draper rests on the proposition that when an informant provides extremely detailed and specific information, it can be inferred that he came upon that information in a reliable manner. However, Draper also requires that the specific detail provided by the

informant be independently corroborated by law enforcement prior to the execution of the warrant.

Defendant-Petitioner maintains that the affidavit supporting the search warrant in this case meets neither the Aguilar-Spinelli test nor its exceptions. The information in the case at bar was clearly less specific and clear than the informant in Draper. He did not provide the name of his "source", her age, race, coloring, clothing, airline that she would use, destination in California, time of departure or return, nor any other detail. He merely stated his connection was female, fat and dumpy looking, and would travel somewhere in California by air on a certain day. Neither does the Affidavit in the case at bar provide a source of the informant's information.

Because no source was noted, and the information was not so detailed that its reliability was manifest on the face of the affidavit, the Affidavit clearly does not comply with the mandate of the Fourth Amendment as interpreted by this Court.

Respectfully submitted,

KURZMAN, SHAPIRO
& MANAHAN

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Attorneys for Defendant
-Petitioner

APPLICATION FOR SEARCH WARRANT

The facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

Your affiant is a criminal investigator for the Minnesota Bureau of Criminal Apprehension, assigned to work narcotics investigations and has been so employed for approximately two years. Your affiant is responsible for investigating narcotics violations involving Minnesota Statute 152.09 and other related Federal Statutes.

That on Monday, December 3, 1979, between 6:45 p.m. and 8:45 p.m., your affiant purchased 2,000 units of LSD. Your affiant paid Jeffrey Dean Fredrickson $2,400 of MNBCA confidential funds for the 2,000 units of LSD. The

2,000 units of LSD have been analyzed by the MNBCA Laboratory and were found to contain Lysergic acid diethylamide. This particular transaction took place in St. Paul, Minnesota, Ramsey County. Samuel George Powers informed your affiant on this transaction that the source for the LSD had the first name of Nick and that Nick would be driving an old pickup truck. Samuel George Powers further indicated to your affiant that Nick lived in the vicinity of 4th Street or 4th Avenue in St. Paul. On this transaction, your affiant observed a light blue Ford pickup bearing MN license YB63636 arrive at the Arby's Restaurant located near 1807 Suburban Avenue in St. Paul, Minnesota where this transaction was supposed to take place. Your affiant observed Jeffrey Dean Fredrickson meet with the driver of this

vehicle prior to the consumation of this transaction. Your affiant observed Jeffrey Dean Fredrickson and the driver of the aforementioned Ford pickup truck, enter the Ford pickup truck and remain there for approximately one minute. Your affiant observed Jeffrey Dean Fredrickson exit the Ford pickup truck carrying a yellow manila envelope. After this, Jeffrey Dean Fredrickson handed to your affiant a yellow manila envelope, which subsequently was analyzed by the MNBCA Laboratory to contain 2,000 (approximately) units of Lysergic acid diethylamide.

Your affiant, after checking with the Dept. of Motor Vehicles, found that the light blue Ford pickup truck, bearing MN license # YB63636 was registered to Nick Fred Nicholas of 425

Goodrich Avenue, St. Paul, Minnesota. After this above mentioned transaction, MNBCA surveillance agents informed your affiant that the light blue Ford pickup truck bearing MN license # YB63636 returned to the vicinity of 425 Goodrich Avenue, St. Paul, Minnesota, Ramsey County.

On December 6, 1979, your affiant purchased 1,000 units of LSD in St. Paul, Minnesota. This purchase took place near the intersection of Western Avenue and Goodrich Avenue, St. Paul, Minnesota. Your affiant met with Jeffrey Dean Fredrickson in the parking lot of the Arby's Roast Beef Sandwich Restaurant located near 1807 Suburban Avenue, St. Paul, Minnesota. Your affiant followed Jeffrey Dean Fredrickson to the intersection of

Western Avenue and Goodrich Avenue, St. Paul, Minnesota. Prior to arriving at this intersection, your affiant observed a light blue Ford pickup truck, bearing MN license # YB63636 parked near 425 Goodrich Avenue, St. Paul, Minnesota. Your affiant delivered $1,200 of MNBCA confidential funds to Jeffrey Dean Fredrickson. Your affiant was advised by MNBCA surveillance agents that they observed Jeffrey Dean Fredrickson leave your affiants (sic) position at the intersection of Western Avenue and Goodrich Avenue in St. Paul, Minnesota and go immediately to 425 Goodrich Avenue, St. Paul, Minnesota. MNBCA surveillance agents observed Jeffrey Dean Fredrickson enter 425 Goodrich Avenue in St. Paul, Minnesota at approximately 5:30 p.m. and observed Jeffrey Dean Fredrickson exit 425

Goodrich Avenue in St. Paul, Minnesota. At approximately 5:37 p.m., on December 6, 1979, Jeffrey Dean Fredrickson delivered to your affiant 1,000 units of LSD which has been analyzed by the MNBCA Laboratory and found to contain approximately 1,000 units containing lysergic acid diethylamide.

On December 12, 1979, your affiant had an undercover meeting with Samuel George Powers in the parking lot of the Ember's Restaurant located near 1664 University Avenue, St. Paul, Minnesota. Your affiant and Powers discussed a 9,000 unit LSD transaction which was to occur in the evening hours of December 12, 1979. Powers informed your affiant that on December 11, 1979, Powers and Jeffrey Dean Fredrickson had gone to Nick's residence and had observed 9,000

units of LSD. Powers further informed your affiant that Nick could hold the LSD for your affiant to purchase on December 12, 1979.

On December 12, 1979, your affiant met with Jeffrey Dean Fredrickson and Nick Fred Nicholas at 425 Goodrich Avenue in St. Paul, Minnesota. During this meeting, your affiant discussed a large LSD transaction with Nicholas and Fredrickson at one point during this conversation, your affiant observed Nicholas remove a quantity of U.S. currency from his pants pocket and hand this to Fredrickson who handed this to your affiant. Your affiant believed this money was in fact the same money, which your affiant had earlier given Fredrickson for 1,000 units of LSD. A list of serial numbers have been made of

your affiants' funds prior to meeting with Fredrickson and Nicholas and the serial numbers from this previous LSD transaction appeared to match.

On December 19, 1979, your affiant purchased approximately 4,000 units of lysergic acid diethylamide from Nick Fred Nicholas for $4,400 of MNBCA confidential funds. This has subsequently been analyzed by the MNBCA Laboratory and found to contain lysergic acid diethylamide. This transaction took place at the Nicholas residence located at 425 Goodrich Avenue, St. Paul, Minnesota.

From December 19, 1979 to January 6, 1980, your affiant has had numerous telephone conversations with Nicholas regarding a large LSD transaction which

was to take place on January 5, 1980, between your affiant and Nicholas. These phone conversations between your affiant and Nicholas have been tape recorded and retained by your affiant.

On December 12, 1979 Nicholas informed your affiant in person that Nicholas' connection for the LSD was a female. Nicholas further described this female connection for LSD as butchy looking and fat and dumpy. Nicholas further informed your affiant that this LSD source lives near the Anoka/Coon Rapids, Minnesota area and that she lives in a farm type residence. Your affiant has tape recorded and retained these undercover conversations.

On January 4, 1980, Nicholas informed your affiant via telephone that

the above described individual would be on a commercial aircraft with a California destination and that this above described individual would be enroute to California via commercial airliner by 11:30 p.m. The stated purpose for this trip was the acquisition of 32,000 units of white blotter type LSD.

MNBCA surveillance agents informed your affiant that Western Airlines, Flight #529 would be departing the Minneapolis/St. Paul Airport enroute to San Francisco, California at approximately 10:50 p.m. Your affiant was informed via telephone that Flight #529 would be approximately 40 minutes late for departure.

At approximately 10:35 p.m., Agent Michael Campion saw a white female, approximately 5'6" tall, weighed approximately 140 pounds, with reddish colored hair, long, pinned back at the sides, wearing brown slacks and tweed type blazer and a beige turtleneck with a red rose in the left lapel of her blazer. Agent Campion and other surveillance agents believed this description to match the description that Nicholas informed your affiant was Nicholas' source for LSD. Agent Campion checked with the ticket counter of Western Airlines at the Minneapolis/St. Paul Airport and was advised that the above described female purchased a one way ticket to San Fransisco (sic) with cash and would be leaving on the next flight. Agent Campion was advised by the ticket agent that this particular

female individual was the only female that matched the description that Agent Campion gave them for that evening. The ticket agent also stated that when the female purchased her ticket she stated that she was aware the flight was 40 minutes late in departing. The above described female individual purchased a ticket under the name of A. Garcia.

Your affiant has been advised by MNBCA surveillance agents that at approximately 11:50 p.m., they observed A. Garcia approach Gate #51 on the blue concourse, Western Airlines. Surveillance agents further advised your affiant that A. Garcia looked nervous, watchful, and suspicious. She also appeared hot, because she was fanning herself with her ticket. At approximately 12:00 a.m., A. Garcia boarded the plane.

At approximately 10:05 p.m. on January 5, 1980, Agents Urness and Shanley observed the female known to them as A. Garcia enter the blue concourse from Northwest Airlines Flight #158 at Gate #23. At this time A. Garcia was carrying two matching brownish and tan colored pieces of luggage and one brown leather type purse, which were the same articles of luggage that surveillance agents observed A. Garcia depart with on January 4, 1980. A. Garcia proceeded to a phone booth, immediately adjacent to Gate #23. Agent Urness was occupying a phone booth next to A. Garcia's. A. Garcia placed a phone call and Agent Urness heard her say "Are you okay?", "Everything went fine." "Perfecto". She also stated something about going home and "I'll meet you at the West Bank in

45 minutes". A. Garcia then placed a second phone call and Agent Urness heard her say "Hi dear" and that she would be home around 1:00. At this time A. Garcia left the blue concourse, went down to the lower level of the terminal and seated herself near the middle exit. She appeared to be extremely watchful of all people in the area. She constantly was looking around. At approximately 10:30 p.m., she exited and met with another female who has subsequently been identified by agents as Jane Lynn Carlson. A. Garcia and Carlson departed across the street to a parked vehicle and were immediately apprehened (sic) by MNBCA agents. At this time, agents informed Carlson and A. Garcia that they were being detained at this time for probable cause to believe that they were under possession of a controlled

substance. Carlson and A. Garcia were subsequently detained at the Minneapolis/St. Paul Airport Police Department and were informed that they were being detained at this time. Agent Urness advised them of their constitutional rights per Miranda. It was also determined at this time by agents that A. Garcia was in fact Patricia Susan Landis. Agents asked Landis if they could have permission to search her luggage for controlled substances and she informed the agents that they could not. Landis was informed by MNBCA agents that she would be detained alongwith (sic) Carlson until a search warrant was applied for her luggage.

On the aforementioned grounds your affiant has reason to believe and does

believe that controlled substances are contained in the above described articles of luggage of Patricia Susan Landis, contrary to law.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PATRICIA SUSAN LANDIS,

Defendant.

Cr. 4-80-8

ORDER

- - - - - - - - - -

Thomas Berg, by Douglas A. Kelley, Assistant U.S. Attorney, 596 U.S. Courthouse, Minneapolis, MN 55401.

Marc Kurzman, 601 West Butler Square, Minneapolis, MN 55403.

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The defendant, Patricia Susan Landis, having moved to suppress evidence, the matter came on for hearing before the undersigned the 15th day of February, 1980.

Present before the Court was the defendant with her attorney Marc

Kurzman. Representing the government was Assistant United States Attorney Douglas A. Kelley.

The Court, having heard the arguments of counsel, testimony, read the briefs and being apprised of the files and records herein, makes the following Findings and Order:

## FINDINGS

Defendant Patricia Susan Landis was arrested by Minnesota Bureau of Criminal Apprehension agents (hereinafter cited as MBCA) at the Minneapolis/St. Paul Airport on January 6, 1980. MBCA agents searched the defendant's luggage pursuant to a search warrant signed by a Minnesota State Judge at approximately 3:00 a.m. on January 6, 1980, and discovered 32,000 units of LSD. Landis was subsequently charged with unlawful

possession of a controlled substance with intent to distribute and conspiracy to distribute a controlled substance. Landis now moves the Court to suppress the 32,000 units of LSD gained from the search of her luggage on the following grounds:

1. The affidavit in support of the warrant is insufficient on its face to establish probable cause to issue a warrant.

2. The information in the affidavit was supplied in part by an informant, and does not fulfill the second requirement of the Aguilar-Spinelli test for reliability.

3. The affidavit shows evidence of alteration which includes facts material to the finding of probable cause, Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978).

The affidavit is signed by MBCA Agent Steven Hagenah. Certain of the information which is related in the affidavit was provided to Agent Hagenah by Nick Fred Nicholas, a co-defendant. The affidavit relates that on December 3, 1979, Nicholas delivered LSD to Jeffery Dean Fredrickson who in turn sold it to Agent Hagenah. On December 6, 1979, Agent Hagenah again purchased LSD from Fredrickson. This time Hagenah and Fredrickson drove to the vicinity of Nicholas' house. Hagenah gave Fredrickson money. Fredrickson was observed by surveillance officers to enter Nicholas' house and return with LSD which he then sold to Agent Hagenah. On Decmeber (sic) 19, 1979, Hagenah purchased LSD directly from Nicholas.

On December 12, 1979, during the attempted purchase of 9,000 units of LSD

from Nicholas, Nicholas told Hagenah that his connection for the LSD was a female. Nicholas further described this female connection as "butchy looking and fat and dumpy."

The affidavit further relates that on January 4, 1980, during a telephone conversation, Nicholas informed Hagenah that his source would depart Minneapolis at approximately 11:30 p.m. that evening by commercial aircraft to go to California to purchase 32,000 units of white blotter-type LSD. The affidavit further relates that the source would return on January 5, 1980, at which time Nicholas would sell a large quantity of the LSD to Hagenah.

Agents determined that there was a Western Airlines flight which was scheduled to depart Minneapolis for San Francisco at approximately 10:50 p.m.

and that the flight had been delayed for 40 minutes making its departure time 11:30 p.m.

The affidavit further relates that at approximately 10:35 p.m., agents observed a female that matched the description Nicholas had given Hagenah. The agents checked with the ticket agents of Western Airlines and found that the female had purchased a one-way ticket to San Francisco with cash for the 11:30 flight. The ticket agent said that this particular female was the only individual that matched the description given to Hagenah. The ticket agent also stated that before the female purchased her ticket she advised the clerk that she was aware that the flight was 40 minutes late. The Court observes that this knowledge on the part of the female could logically have been imparted to

Mr. Nicholas in time for him to have advised the agent of the 11:30 p.m. departure which bears upon the reliability of Nicholas. The female purchased the ticket in the name of A. Garcia. Agents observed the female before she departed Minneapolis and stated she looked nervous, watchful and suspicious. They then observed her board the flight to San Francisco. The informant Nicholas had advised the agents that the "butchy looking and fat and dumpy" woman would be returning from California on the next day, January 5, 1980.

On January 5, 1980, at approximately 10:05 p.m., agents observed the same woman arrive in Minneapolis on the flight from San Francisco. She was wearing the same clothing and carrying the same luggage as she had when she

departed, minus the rose in her lapel. The Court observed that in this respect also Nicholas' testimony appears to be accurate and would lend itself toward a conclusion of Nicholas' reliability. Upon her arrival, she went to a telephone booth and placed two telephone calls. In the first telephone call, she stated: "Are you O.K.? Everything went fine. Perfecto." She then said something about going home and finally ended by saying, "I'll meet you at the West Bank in 45 minutes." (The West Bank is an area near the University of Minnesota of some reknown for its drug culture.) In the second telephone call she was heard to say: "Hi, dear," and that she would be home around 1:00 a.m. Agents then observed the female as she waited for transportation. They stated that she was extremely watchful and was

constantly looking around. When she appeared about to depart the airport, agents detained her. They determined that her name was Patricia Susan Landis.

The Court is convinced that the affidavit contains sufficient facts to constitute probable cause that Patricia Susan Landis was in possession of LSD when she returned from California on January 5, 1980. In essence, the gist of the probable cause is that a woman of a certain description was to depart Minneapolis on Friday evening at a certain time and was to return sometime on Saturday with the LSD. Agents located a woman whom they thought fulfilled or matched the description. Counsel for defendant attacks the description as being vague and indefinite. The Court had the opportunity to observe the defendant

during the course of hearings in this matter for almost a full day and concludes that the description contained in the affidavit aptly and appropriately describes Patricia Susan Landis. The description is narrowed by the other facts and circumstances and was as accurate as is needed under the case law as it applies. Furthermore, the fact that both Landis and Nicholas knew that the flight was delayed and would be departing at 11:30 p.m. tends to imply a prior communication and tends to pinpoint the flight on which Landis was departing.

The important fact to note in the affidavit is that the female who departed Minneapolis on Friday returned on Saturday. If the description were unduly vague as to their first observation of her when she departed, it

was validated when she returned on Saturday. If other people who closely resembled Landis had departed on Friday night and also returned on Saturday, agents would not have been able to ascertain the individual they were seeking. But since Landis was the only individual fitting the description that left on Friday and returned on Saturday, there was little chance agents had the wrong person. Finally, the telephone calls which she made at the airport after she arrived on Saturday evening could be interpreted as setting up the time and place for the delivery of the LSD.

The Court notes that the warrant was drafted in the early morning hours of January 6, 1980. In doubtful or marginal cases, resolutions of Fourth Amendment questions should be determined

to a large extent by a preference accorded to searches based upon warrants. United States v. Brown, 584 F.2d 252 (8th Cir. 1978).

A) Aguilar-Spinelli

Counsel for defendant argues that Nicholas is an informant and that since the affidavit does not provide sufficient information as to his reliability, the affidavit must fail, citing Aguilar and Spinelli. The Court finds that Nicholas was not an informant but rather a co-conspirator who was making statements contrary to his penal interests. Statements against penal interests are sufficient to provide the reliability required by Aguilar and Spinelli. See United States v. Harris, 403 U.S. 573 (1971); United States v. Holmes, 594 F.2d 1167 (8th Cir. 1979).

B) The Alteration Issue

Defendant sought to go behind the face of the affidavit to challenge certain of the statements contained in the affidavit. The Court is aware that the Supreme Court has stated that in order to go behind an affidavit there must be allegations of deliberate falsehood or a reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 2685 (1978). Without determining that the defendants had met their burden, the Court thought it appropriate to hold a hearing. The defendant challenged the veracity of certain statements in the affidavit because the affidavit states that the conversations were recorded and transcribed and counsel for defendant was unable to find the statements in the

transcripts. Consequently he argues that the statements are suspect. For example, the description of the female which was given on December 12, 1979, was not contained in the transcript of the recorded undercover conversation. The Court has had the opportunity to evaluate the testimony of Agent Hagenah who explained that the conversation was recorded and transcribed as stated in the affidavit but that there were inaudible portions in the transcripts due to recording difficulties at the time. The Court finds that the defendant's challenge to the veracity of the statements in the affidavit fails.

And finally, defendant noted that there was a sentence in the search warrant which was in a different typeface from the rest of the affidavit. Consequently defendant alleged that the

statement was added after the Judge had signed the search warrant and therefore the warrant was defective. The defendant did not produce an affidavit nor even represent that the Judge would state the sentence was added later. The Court notes that the Assistant United States Attorney Kelley stated that the Judge could not remember whether the sentence was in the affidavit or not. The Court had the opportunity to hear the testimony of Agent Hagenah, Agent Urness and their clerk-typist Joy Johnson who all stated that the sentence in question was typed in at the MBCA's office before the affidavit was taken to the Judge for signature. This Court finds that they were credible witnesses and that the sentence was not inserted after the Judge signed the warrant.

ORDER

IT IS HEREBY ORDERED That the Defendant's motion to suppress is in all things denied.

Dated March 19, 1980

Miles W. Lord
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

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No. 80-1318

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| United States of America, | * | |
| | * | Appeal from the |
| | * | United States |
| Appellee, | * | District Court |
| | * | for the District |
| v. | * | of Minnesota |
| | * | |
| Patricia Susan Landis, | * | |
| | * | |
| | * | |
| Appellant. | * | |

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Submitted: September 10, 1980
Filed: October 16, 1980

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Before LAY, Chief Judge, HEANEY, Circuit Judge, and PORTER, District Judge.*

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LAY, Chief Judge.

Patricia S. Landis was convicted on one count of possession of lysergic acid

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*Donald J. Porter, United States District Judge for the District of South Dakota, sitting by designation.

diethylamide (LSD) with intent to distribute and on a second count of conspiracy to distribute LSD, in violation of 21 U.S.C. §§ 841(a)(1) and 846.[1] On appeal she challenges the issuance of a search warrant on the ground there was an insufficient showing of probable cause. We disagree; the convictions are affirmed.

Landis was arrested on January 5, 1980, at the Minneapolis-St. Paul Airport. A warrant was obtained to search her luggage, where the officers found approximately 32,000 units of LSD. In applying for a search warrant, Steven L. Hagenah, an investigator for the

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[1] On the possession count Landis received a sentence of five years imprisonment followed by a four year special parole term; she received a consecutive sentence of two years imprisonment and a four year special parole term on the conspiracy charge.

Minnesota Bureau of Criminal Apprehension (MBCA), filed an affidavit with a magistrate which alleged that Hagenah, acting as an undercover agent, purchased LSD on several occasions in December, 1979, and that Nick Fred Nicholas was identified as the direct or indirect source of the LSD. The affidavit also stated that on December 12, 1979, Hagenah met with Nicholas and discussed a large LSD transaction; that Nicholas told Hagenah that Nicholas' connection for the LSD was a female who was "butchy looking and fat and dumpy;" that on December 19, 1979, Nicholas sold him approximately 4,000 units of LSD; and that from December 19, 1979, to January 6, 1980, Hagenah and Nicholas had numerous conversations regarding a large purchase of LSD by Hagenah from Nicholas scheduled for January 5, 1980.

The affidavit further states that on January 4, 1980, Nicholas told Hagenah that the female "connection" "would be on a commercial aircraft with a California destination and that this above described individual would be enroute to California via commercial airliner by 11:30 p.m."; that Nicholas stated that the purpose of the trip was to obtain 32,000 units of LSD; that on January 4, at approximately 10:35 P.M. an MBCA agent at the Minneapolis-St. Paul Airport saw a white female, approximately 5'6" tall and 140 pounds; that Western Airlines employees confirmed this person had purchased a one-way ticket to San Francisco under the name "A. Garcia" for a flight, originally scheduled for 10:50 P.M., which was expected to depart approximately 40 minutes late; that the

ticket agent said this female was the only one matching the description provided by MBCA; and that the agents saw her board the plane, and said she appeared "nervous, watchful, and suspicious."

According to the affidavit, at around 10:05 P.M. on January 5, 1980, MBCA agents saw "A. Garcia" arrive at the Minneapolis-St. Paul Airport from a Northwest Airlines flight. She went to a phone booth adjacent to the gate and made a phone call. An agent was in the booth next to hers and heard her say "Are you okay?," "Everything went fine," "Perfecto," and "I'll meet you at the West Bank in 45 minutes." She made a second call, saying "Hi dear" and that she would be home about 1:00. She was described as "extremely watchful of all people in the area." She then met

another woman and went to a parked vehicle, where agents arrested them both. "A. Garcia" was identified as appellant Patricia S. Landis.

Probable Cause

Landis argues that the magistrate lacked probable cause because the information in the affidavit failed the Aguilar-Spinelli test,[2] which requires, in part, that the affidavit set forth "some of the underlying circumstances from which the informant reached the conclusions contained in the tip." United States v. Graham, 548 F.2d 1302, 1307 (8th Cir. 1977).[3] It is

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[2] Spinelli v. United States, 393 U.S. 410 (1969); Aguilar v. Texas, 378 U.S. 108 (1964).

[3] Landis does not argue that the affidavit failed to show the reliability of the informant.

fundamental that "affidavits for search warrants . . . must be tested and interpreted by . . . courts in a commonsense and realistic fashion," United States v. Ventresca, 380 U.S. 102, 108 (1965). After describing Nicholas' sales of LSD, the affidavit states that the female described was Nicholas' "connection." A reasonable inference exists that Nicholas' knowledge of his connection's appearance and her travel plans was based on his own participation in the scheme; it is reasonably evident that his knowledge was derived from his personal involvement in the criminal activity as a coconspirator. Such information is plainly superior to "a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation."

Spinelli v. United States, 393 U.S. 410, 416 (1979). See United States v. Brown, 584 F.2d 252, 255-57 (8th Cir. 1978), cert. denied, 440 U.S. 910 (1969) (undercover purchases of drugs and identification of source); United States v. Kershman, 555 F.2d 198, 199-201 (8th Cir.), cert. denied, 434 U.S. 892 (1977) (undercover purchase of drugs and identification of source and source's "connection"); United States v. Burgard, 551 F.2d 190, 192-93 (8th Cir. 1977) (undercover purchase of firearms and identification of source). See also United States v. Long, 449 F.2d 288, 291-93 (8th Cir. 1971), cert. denied, 405 U.S. 974 (1972); United States v. Martin, 615 F.2d 318, 324 (5th Cir. 1980); United States v. Ashley, 569 F.2d 975, 981 (5th Cir.) cert. denied, 439 U.S. 853 (1978).

Landis also claims that even if Nicholas' information meets the Aguilar and Spinelli standards, his description of Landis was too vague to support the conclusion that the woman arrested at the airport was Nicholas' "connection." We emphasize that "[t]he affidavit need only establish the probability of criminal activity and secreting of evidence on specific premises, not proof beyond a reasonable doubt." United States v. Smith, 462 F.2d 456, 460 (8th Cir. 1972). In this regard, it is also fundamental that great deference is to be shown the magistrate's determination. McCreary v. Sigler, 406 F.2d 1264, 1268 (8th Cir.), cert. denied, 395 U.S. 984 (1969).

Although the description of Nicholas' connection as a "butchy, fat and dumpy" female may be imprecise when

taken alone, the affidavit also informed the magistrate of other salient factors. Nicholas said a woman of this description would leave for California by 11:30 on January 4, 1980; Landis flew to San Francisco on that day and at approximately the time predicted.[4] Landis was identified by MBCA agents and an airline employee as the only person

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[4]The affidavit says Landis boarded the plane around 12:00. Although the affidavit states that the connection would leave by 11:30, not at 11:30, we recognize that "courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical . . . manner." United States v. Ventresca, 380 U.S. 102, 109 (1965). The magistrate could consider the fact that Nicholas mentioned an 11:30 departure, and that the flight Landis was on was a 10:50 flight which was expected to be 40 minutes late. The affidavit also says that when Landis bought her ticket she told a ticket agent she already knew the flight was expected to depart 40 minutes late.

on the flight who matched the description, and she had a nervous and watchful appearance. The presence of these additional facts must be weighed along with the description.

We find probable cause sufficient to justify the issuance of the search warrant.

We affirm the convictions.

A true copy.

Attest:

CLERK, U. S. COURT OF
APPEALS, EIGHTH CIRCUIT